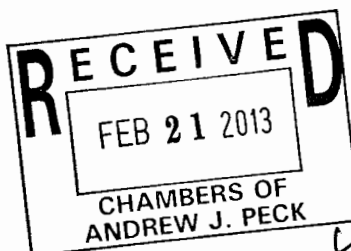


USDC SDNY
DOCUMENT
ELECTRONICALLY FILEDLAW OFFICE OF
NATHANIEL B. SMITH
ATTORNEY AT LAW
111 BROADWAY
NEW YORK, NEW YORK 10006DOC#
DATE FILED: 2/22/13

NATHANIEL B. SMITH



BY TELECOPIER

Hon. Andrew J. Peck
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, New York 10007-1312

Dear Judge Peck:

Pursuant to the Court's Order at the February 20, 2013 conference in the above-referenced action, I am writing to inform the Court about the status of discussions regarding the deposition of Ricardo Leon. After discussions with Mr. Leon regarding the Court's rulings and Your Honor's observations about the Leon deposition, I informed plaintiffs' counsel that Mr. Leon wanted to appear for his deposition by telephone pursuant to Rule 30(b)(4). Since Mr. Leon does not want to waive his right to appear at any trial and defend himself and since there are pending motions that challenge both subject matter and personal jurisdiction over him, I submit that a telephonic deposition is a reasonable compromise under the circumstances, especially since the plaintiffs requested – and the Court granted – the plaintiffs' application yesterday to take several other depositions by telephone. Today, plaintiffs' counsel informed me that he objects to this suggestion.

Accordingly, I am writing to request that the Court direct that pursuant to Rule 30(b)(4) of the Federal Rules of Civil Procedure that the deposition of Mr. Leon go forward by telephonic means.

Respectfully submitted,

Nathaniel B. Smith

212-805-7933
cc: Raymond Vandenberg, Esq.
by fax (212-763-6810)**BY ECF**

SO ORDERED:

Hon. Andrew Jay Peck
United States Magistrate Judge

MEMO ENDORSED

1. This was not one of its options on the table. It is rejected.
February 21, 2013

2. The Court will consider the idea of allowing its depositions to go forward by videoconference – at its expense, with the Court reporter – and all counsel in the town of the parties, stipulated to his proposal.

Etalon v. Schoenbach
12-cv-6868 (BJS) (AJP)

3. Mr. Leon also to provide an opportunity

how often he has been in the prison in 2012-13, and where he was (and how long) for each such trip.
4. 2nd off + parts, parties, parties are also dep due by 10AM Monday 2/25.

copy ECF. All counsel

ECF TRANSCRIPTION SHEET



ANDREW J. PECK
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT
Southern District of New York
United States Courthouse
500 Pearl Street, Room 1370
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933
Telephone No.: (212) 805-0036

Dated: February 22, 2013

Total Number of Pages: 2

TRANSCRIPTION OF MEMO ENDORSED ORDER

1. This was not one of the options on the table. It is rejected.
2. The Court will consider the idea of allowing the deposition to go forward by videoconference – at defendants' expense, and with the Court reporter and all counsel in New York (if the parties stipulate to this procedure).
3. Mr. Leon also is to provide an affidavit identifying how often he has been in North America in 2012-13, and where he was (and for how long) for each trip.
4. That affidavit and parties' positions re video dep. due by 10 AM on Monday 2/15.

Copies by ECF to: All Counsel